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AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42187, Sept. 19, 1983, unless otherwise noted.

15.000 Scope of part.

This part prescribes policies and procedures governing contracting for supplies and services by negotiation.

Subpart 15.1—General Requirements for Negotiation

15.100 Scope of subpart.

This subpart covers general requirements regarding negotiated contracts. Detailed and specific requirements appear throughout this regulation.

15.101 Definition.

Negotiation means contracting through the use of either competitive or other-than-competitive proposals and discussions. Any contract awarded

without using sealed bidding procedures is a negotiated contract (see 14.101).

[50 FR 1739, Jan. 11, 1985, and 50 FR 52429, Dec. 23, 1985]

15.102 General.

Negotiation is a procedure that includes the receipt of proposals from offerors, permits bargaining, and usually affords an opportunity to revise their offers before award of a contract. Bargaining—in the sense of discussion, persuasion, alteration of initial assumptions and positions, and give-and-take—may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1739, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

15.103 Converting from sealed bidding to negotiation procedures.

When the agency head has determined, in accordance with 14.404-1(e)(1), that an invitation for bids is to be cancelled and that use of negotiation is appropriate to complete the acquisition, the contracting officer may negotiate and make award without issuing a new solicitation subject to the following conditions—

(a) Prior notice of intention to negotiate and a reasonable opportunity to negotiate have been given by the contracting officer to each responsible bidder that submitted a bid in response to the invitation for bids;

(b) The negotiated price is the lowest negotiated price offered by any responsible bidder; and

(c) The negotiated price is lower than the lowest rejected bid price of a responsible bidder that submitted a bid in response to the invitation for bids. However, this paragraph (c) does not apply if the invitation was canceled and all bids were rejected for the reason stated in 14.404-1(c)(8).

[50 FR 1739, Jan. 11, 1985, as amended at 55 FR 52790, Dec. 21, 1990]

15.104—15.105 [Reserved]

15.106 Contract clauses.

15.106-1 Audit and Records—Negotiation clause.

(a) This subsection implements 10 U.S.C. 2313, 41 U.S.C. 254d, and OMB Circular No. A-133.

(b) The contracting officer shall, if contracting by negotiation, insert the clause at 52.215-2, Audit and Records—Negotiation, in solicitations and contracts except those (1) not exceeding the simplified acquisition threshold; or (2) for commercial items exempted under 15.804-1; or (3) for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.

(c) In facilities contracts, the contracting officer shall use the clause with its Alternate I. In cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II. If the examination of records by the Comptroller General is waived in accordance with 25.901, the contracting officer shall use the clause with its Alternate III.

[60 FR 42650, Aug. 16, 1995; 60 FR 54045, Oct. 19, 1995, as amended at 61 FR 39190, July 26, 1996]

15.106-2 Audit—Commercial items.

(a) This subsection implements 10 U.S.C. 2306a(d)(2) and (3) and 41 U.S.C. 254b(d)(2) and (3).

(b) The contracting officer shall, when contracting by negotiation, insert clause 52.215-43, Audit—Commercial Items, in solicitations and contracts when submission of cost or pricing data is expected to be excepted under 15.804-1(a)(2) (i.e., a commercial item where price is otherwise fair and reasonable). The clause shall also be included in solicitations and contracts when cost or pricing data are required, for incorporation into subcontracts that may be excepted under 15.804-1(a)(2).

[60 FR 48211, Sept. 18, 1995]